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PTO/SB/84 (11-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)****Docket Number (Optional)  
56249-089 (PHLL-141)**First named inventor: **Alan P. Sliski**Application No.: **09/502,762**Art Unit: **2881**Filed: **February 11, 2000**Examiner: **Anthony G. Quash**Title: **SHAPED BIOCOMPATIBLE RADIATION SHIELD AND METHOD FOR MAKING SAME**Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX: (703) 308-6916NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.The above-identified application became abandoned for failure to file a timely and proper reply to a  
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the  
expiration date of the period set for reply in the Office notice or action plus an extensions of time  
actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee —required for all utility and plant applications  
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**☐ Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☒ Other than small entity - fee \$ **1,330** (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in  
the form of **an Amendment and Response** (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if required) of \$ \_\_\_\_\_.

- ☐ has been paid previously on \_\_\_\_\_
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the  
USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete,  
including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments  
on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent  
and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS  
ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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### 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

### 5. CHARGE ANY FEES DUE WITH THESE COMMUNICATIONS TO DEPOSIT ACCOUNT NO. 50-1133.

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

March 19, 2004  
Date

Elizabeth E. Kim  
Signature

Telephone  
Number: 617-535-4411

Elizabeth E. Kim, Reg. No. 43,334  
Typed or printed name

McDermott, Will & Emery  
Address

28 State Street, Boston, MA 02109  
Address

Enclosures: ☐ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: Transmittal Letter

### CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

March 19, 2004  
Date

Elizabeth E. Kim  
Signature

Elizabeth E. Kim  
Type or printed name of person signing certificate

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Alan P. Sliski

Serial No: 09/502,762

Filing Date: February 11, 2000

Title: SHAPED BIOCOMPATIBLE RADIATION SHIELD AND METHOD  
FOR MAKING SAME

Examiner: Anthony G. Quash

Art Unit: 2881

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**Certificate of Facsimile Transmission 37 CFR § 1.8**

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Date: March 19, 2004

Elizabeth E. Kim  
Elizabeth E. Kim

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**VIA FACSIMILE**

Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**STATEMENT ESTABLISHING UNINTENTIONAL DELAY BETWEEN DATE OF  
NOTIFICATION OF ABANDONMENT AND THE FILING OF A PETITION FOR  
REVIVAL UNDER 37 C.F.R. 1.137(b)**

Dear Sir:

This paper is in support of the enclosed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) ("Petition for Revival"), in regards to the above-identified patent application Serial No. 09/502,762 (the '762 application).

The Petition for Revival is being filed within one year of the date on which the application would have become abandoned. (The application would have become abandoned on March 19,

2003.) This Petition for Revival is not being filed within 3 months of the date in which Applicant was first notified that the application was abandoned. Under MPEP 711.03(c) III-C, "in instances in which such petition was not filed within 3 months of the date the applicant was first notified that the application was abandoned, applicants should include a showing as to how the delay between the date the applicant was first notified by the Office that the application was abandoned and the filing of a petition under 37 CFR 1.137 was . . . "unintentional" in a petition under 37 CFR 1.137(b)."

Accordingly, this Statement Establishing Unintentional Delay Between the Date of Notification of Abandonment and the Filing of a Petition for Revival Under 37 C.F.R. 1.137(b) is submitted, in accordance with the requirements of MPEP 711.03(c) III-C.

The delay between the date the Applicant was first notified by the Office that the application was abandoned (July 4, 2003), and the present filing of a petition under 37 CFR 1.137(b) was unintentional, as established by the following facts:

1. The previous assignee of the '762 application (Photoelectron, Inc.) filed for bankruptcy, i.e. filed a voluntary petition for relief under Chapter 7 of Title 11 of the US Bankruptcy Code, on May 2, 2003.
2. The current assignee of the '762 application, Carl-Zeiss-Stiftung (doing business as Carl Zeiss), entered into an Asset Purchase Agreement with the Chapter 7 trustee of the estate of Photoelectron, Inc., on June 4, 2003.
3. An Order Authorizing Sale of Substantially All of the Debtor's Assets was signed by the Bankruptcy Judge on June 30, 2003.
4. During the eight months following the Order signed by the Bankruptcy Judge, Carl Zeiss embarked upon the lengthy task of reviewing and assessing the patent portfolio (patents, pending that Zeiss acquired from Photoelectron, Inc., and determining the course of action to be followed for each item in the portfolio.
5. On February 19, 2004, Carl Zeiss sent a letter to its attorneys requesting that the above-referenced application be revived.
6. In response to this letter, attorneys for Carl Zeiss prepared the Petition for Revival, which is being filed hereby on March 19, 2004, i.e. within one year of the date on which the above-referenced patent application would have become abandoned.

Serial No.: 09/502,762

Respectfully submitted,

*Elizabeth Kim*

Elizabeth Kim  
Registration Number 43,334  
McDERMOTT, WILL & EMERY  
28 State Street  
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Tel. (617) 535-4411  
Fax: (617) 535-3800

Date: March 19, 2004

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OFFICIAL

Attorney Docket No. PHLL-141 (56249-089)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Alan P. Sliski

Serial No: 09/502,762

Filing Date: February 11, 2000

Title: SHAPED BIOCOMPATIBLE RADIATION SHIELD AND METHOD  
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Examiner: Anthony G. Quash

Art Unit: 2881

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**Certificate of Facsimile Transmission 37 CFR § 1.8**

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Date: March 19, 2004

Elizabeth E. Kim  
Elizabeth E. Kim

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**VIA FACSIMILE**

Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL LETTER**

Dear Sir:

Enclosed herewith for filing in connection with the above-identified patent application are the following:

- 1) Amendment and Response;
- 2) Petition for a Three-Month Extension of Time;

Serial No: 09/502,762

March 19, 2004

Page - 2 -

- 3) Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. 1.137(b); and
- 4) Statement Establishing Unintentional Delay Under 37 C.F.R. 1.137(b);

Respectfully submitted,

Elizabeth E. Kim

Elizabeth E. Kim, Reg. No. 43,334

McDermott, Will & Emery

28 State Street

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Date: March 19, 2004

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TO:			
Name	Company	Facsimile No.	Contact No.
Examiner Anthony G. Quash Office of Petitions	U.S. Patent and Trademark Office	703-308-6916	

FROM: Elizabeth E. Kim Direct Phone: 617-535-4411  
E-Mail: ekim@mwe.com  
Sent By: Gayle Endres Direct Phone: 617-535-4113  
Client/Matter/Tkpr: 56249-089-5561 Originals Follow by Mail: No  
Number of Pages, Including Cover: \_\_\_\_\_  
Re: U.S.S.N. 09/502,762 PETITION FOR REVIVAL OF APPLICATION - DUE 03/19/04

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